

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

DAVID BURNETT, MICHAEL PARADISE,)
and DAVID NELSON, as representatives of a)
class of similarly situated persons and on behalf)
of the WESTERN GLOBAL AIRLINES, INC.)
EMPLOYEE STOCK OWNERSHIP PLAN,)
)
Plaintiffs,)
)
v.)
) C.A. No. 22-270-RGA
PRUDENT FIDUCIARY SERVICES LLC,)
MIGUEL PAREDES, JAMES K. NEFF,)
CARMIT P. NEFF, JAMES K. NEFF)
REVOCABLE TRUST DATED 11/15/12,)
CARMIT P. NEFF REVOCABLE TRUST)
DATED 11/15/12, WGA TRUST DATED)
8/16/13, and JOHN DOES 1-10,)
)
Defendants.)

**DEFENDANTS' RESPONSE TO PLAINTIFF'S NOTICE OF SUPPLEMENTAL
AUTHORITY**

In their latest Notice of Supplemental Authority (D.I. 47), Plaintiffs cite a recent decision from the U.S. District Court for the Southern District of New York, *Lloyd v. Argent Trust Co.*, No. 1:22-cv-04129-DLC, 2022 WL 17542071 (December 6, 2022). The decision offers nothing new, and Plaintiffs rely on this out-of-circuit district court opinion to repeat arguments they have already made repeatedly—arguments that Defendants, in turn, have rebutted in their own briefing and during oral argument. Chief among these arguments is that the Seventh Circuit’s decision in *Smith*, which *Lloyd* relies upon heavily, is inconsistent with Third Circuit precedent and misapplies the effective vindication doctrine. In addition to the reasons expressed in Defendants’ prior briefing (see D.I. 24, 25, 28), Plaintiffs’ reliance on *Lloyd* is misplaced for additional reasons.

First, while *Lloyd*'s arbitration language is close to the operative clause in the Western Global Airlines Plan Document, *Lloyd* does not confront a crucial point: that the plain language of the arbitration provision at issue must be read to allow equitable remedies besides monetary relief. Neither the parties' briefing in *Lloyd* nor the court's order addressed the decision in *Holmes v. Baptist Health S. Fla. Inc.*, No. 21-22986, 2022 WL 180638 (S.D. Fla. Jan. 20, 2022), which supports this approach. *See* Def's Reply Br. in support of Mot. to Compel Arbitration (D.I. 28) at 4, 6, and 8. *Holmes* offers a proper application of established law by both giving effect to all words of the arbitration clause and enforcing the liberal policy in favor of enforcing arbitration provisions expressed in the Federal Arbitration Act and by the Supreme Court. If an arbitration provision is capable of more than one meaning, this Court should interpret the language in such a way as to preserve it, not reject it.

Second, in their effort to disregard the arbitration provision's plain language, Plaintiffs suggest that the remedy of rescission would not be available under the provision because rescission "would necessarily return money to participants beyond the plaintiffs in this case." But this assertion is inconsistent with the ESOP formation transaction. Rescission would undo the ESOP transaction and return all parties to where they were previously. No Plan participant contributed funds to the ESOP or provided any financing for the purchase of stock, and the Complaint does not allege otherwise. Therefore, even if rescission were granted, the individual participants would not receive monetary relief—and would be left with one less employee benefit. They can only lose, not gain.

For these reasons, and those expressed in the earlier briefing, this Court should reject *Lloyd*'s holding and rationale.

RICHARDS, LAYTON & FINGER, P.A.

/s/ Christine D. Haynes

Jennifer C. Jauffret (#3689)
Christine D. Haynes (#4697)
One Rodney Square
920 N. King Street
Wilmington, DE 19801
Telephone: (302) 651-7700
jauffret@rlf.com
haynes@rlf.com

OF COUNSEL:

Jeffrey S. Russell
Bryan Cave Leighton Paisner LLP
One Metropolitan Square
211 North Broadway, Suite 3600
St. Louis, MO 63102

Robert M. Lewis, Jr.
1201 West Peachtree St., N.W.
14th Floor
Atlanta, Georgia 30309-3471

*Attorneys for Defendants James K. Neff,
Carmit P. Neff, James K. Neff Revocable
Trust dated 11/15/12, Carmit P. Neff
Revocable Trust dated 11/15/12, and WGA
Trust dated 8/16/13*

Dated: January 23, 2023

CHIPMAN BROWN CICERO & COLE

/s/ Mark L. Desgrosseilliers

Joseph B. Cicero (#4388)
Mark L. Desgrosseilliers (#4083)
Hercules Plaza
1313 North Market Street, Suite 5400
Wilmington, Delaware 19801
Telephone: (302) 295-0191
cicero@chipmanbrown.com
desgross@chipmanbrown.com

OF COUNSEL:

Lars C. Columbic
Sean C. Abouchedid
Groom Law Group, Chartered
1701 Pennsylvania Avenue, N.W.
Washington, DC 20006-5811

*Attorneys for Defendants Prudent Fiduciary
Services LLC and Miguel Paredes*